

**REMARKS**

Claims 3, 4, 5, 9, 12, 16, 31-35, 36, 37, and 38-40 are currently pending in the application. Applicant has amended claims 31 and 37. Applicant requests reconsideration of the application in light of the following remarks.

**Telephone Interview**

Applicant's representative wishes to thank the Examiner for his courtesy and time during a telephone interview that was held on April 13, 2004. The Examiner's comments and insight were very helpful in preparing this response. It is hoped that the comments below reflect the positive subject matter that was derived from the interview.

**Objections to Claims 3 and 9**

The Examiner has objected to claims 3 and 9 for being dependent upon a rejected base claim. Claims 3 and 9 depend from independent claims 36 and 37, respectively. Applicant has filed a terminal disclaimer herewith to overcome the double patenting rejection of base claim 36 as suggested by the Examiner. Applicant has also filed an amendment to claim 37 that is considered to place claim 37 in condition for allowance.

**Indication of Condition for Allowance**

The Applicant wishes to thank the Examiner for the indication of condition for allowance for the above referenced application but for the few formal matters. Applicant believes that all formal matters have been resolved by this amendment and remarks, that the application is in condition for allowance, and respectfully requests the same.

**Rejections under 35 U.S.C. §112**

Claim 33 is rejected by the Examiner under 35 U.S.C. 112. Specifically, the Examiner has stated that “the first edge portions 156 are not longitudinally aligned with adjacent third edge portions 158 is not found in the original disclosure.” However, the terminology for first second and third edge portions was added by a second preliminary amendment to the Specification filed August 27, 2003. (A copy of the paragraph that was added is included herewith as Exhibit A for the Examiner’s convenience.) Additionally, the Examiner admits that he understands that Figure 3 shows the first edge portions 156 being longitudinally aligned with adjacent third edge portions 158 if viewed parallel to the longitudinal axis. A basis for the “not longitudinally aligned” configuration is provided by the recitation of page 6, lines 23-26 that states that “the width of the first regions may differ from the width of the third regions.” This recitation in light of the paragraph added to the Specification by the second preliminary amendment provides a basis for first and third edge portions corresponding to first and third regions of the flange, respectively. Thus, when these regions have different widths, the first and third edge portions are “not longitudinally aligned”.

The Examiner further states that the applicant “has not defined ‘longitudinally aligned’”. The term aligned means “in line with” and the term “longitudinal” is defined in the Specification as referring to a direction along the length of the tape. In fact, the Applicant utilizes the same description of “longitudinally aligned barb roots 136” on page 6, line 3 of the original disclosure to describe the relationship between barb roots. Thus, the Applicant believes that the term “longitudinally aligned” has been adequately defined. That is, “longitudinally aligned” elements simply means that the elements are in line with each other in a direction along the length of the tape. Conversely, “not longitudinally aligned” means the elements are not in line in a direction along the length of the tape. The Specification was unsuccessfully checked by the Applicant’s representative during the limited time of the interview in order to find the terms “edge portions”. After the interview the Applicant’s representative discovered the terms “edge portions” added by the second preliminary amendment as described above. Since the amendment was entered as proper by

the U.S. Patent Office, it appears that no amendment to claim 33 is required, and claim 33 is thus considered to conform with Section 112. Applicant respectfully requests that the rejection of claim 33 under 35 U.S.C. § 112 be withdrawn.

### **Double Patenting Rejection**

Claims 5 and 36 stand rejected by the Examiner under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,601,830 in view of Cochrane, British patent GB-2,337,279. In order to avoid further expenses and time delay, Applicant elects to expedite the prosecution of the present application by filing a terminal disclaimer to obviate the double patenting rejections in compliance with 37 CFR §1.321 (b) and (c). Applicant's filing of the terminal disclaimer should not be construed as acquiescence of the Examiner's double patenting or obviousness-type double patenting rejections. Attached is the terminal disclaimer and accompanying fee.

### **Rejections under 35 U.S.C. §102**

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Claims 12, 16, 31, 32, 35 and 37 were rejected by the Examiner under 35 U.S.C. § 102(b) as being anticipated by Boggs (U.S. Patent No. 4,509,726, hereinafter “Boggs”). Applicant respectfully traverses this rejection and requests reconsideration of the claims.

Claim 31 has been amended to include details that the Examiner indicated would overcome the art relied upon. Specifically, claim 31 now recites that the “second edge portions are recessed inwardly toward the channel relative to the first and third edge portions

and the second edge portions are not continuous with the first edge portions or the third edge portions”. Boggs, on the other hand, has a recessed edge portion that is not between the first and third edge portions. Therefore, claim 31 is now considered to be allowable, and notice thereof is earnestly requested.

Claims 32 and 35 are considered to be allowable as depending from an allowable base claim 31 and for other details in claims 32 and 35 as may be appreciated by the Examiner.

Claim 37 has been amended to include an additional phrase, “the second region extends inwardly from the first region to the third region;” that makes substantially all of allowed claim 1 of the parent patent 6,601,830 common to newly amended Claim 37. Claim 37 has an additional limitation in the last line. Therefore, claim 37 is considered to be allowable for the same reasons as was claim 1 of the parent patent and for additional details as may be appreciated by the Examiner.

Furthermore, the Examiner has construed Boggs and provided a detailed explanation of several portions of the invention of Boggs as being analogous to the present invention as set forth in claim 37. A marked up copy of Figure 2 of the Boggs patent was attached to the Office action to aid in deciphering the Examiner’s assignment of claim 37 elements to portions of the Boggs device. (A copy of this marked up Figure 2 of Boggs is included herewith as Exhibit B.) The Examiner’s assignment of “a first region ... adjacent to the barb root” is considered to be contrary to the commonly known meanings 1(b) and (c) of the term “adjacent” in the Merriam Webster Online dictionary. (See copy of the Merriam Webster definition included herewith as Exhibit C.) This is especially so in light of the wording of lines 9 and 10 of claim 37 that state that the “second region [is] ... adjacent to the first region and distal from the adjacent barb root”. It does not seem reasonable that the Examiner could properly assign the “second region” (that is recited as distal from the barb root) to the portion marked A18 shown in the marked up copy of Figure 2 of Boggs and the “first region” (that is recited as adjacent to the barb root) to a portion marked A17, when the relationship of these portions in Figure 2 is exactly the opposite. That is, the portion marked A17 is more distal than portion marked A18, which is contrary to the claim 37 language.

Hence, the Examiner's former interpretation that resulted in the allowance of Claim 1 in the parent patent 6,601,830 is thought to be proper, and withdrawal of the rejection of claim 37 is respectfully requested.

In the interview, the Examiner suggested that perhaps including terminology such as "projecting from" to describe how the first second and third portions abut and extend from each other in order to define over the Boggs reference. The Applicant believes that this relationship is already claimed sufficiently by the language of claim 37, lines 12 and 13 that states, "the third region extending lengthwise from the second region and meeting a corresponding third region extending lengthwise away from another second region". This together with the above described (and claimed) relationships of the first portion being adjacent to the barb root and the second region being distal from the barb root is considered to provide a similarly detailed relational recitation to that which the Examiner proposed with language such as, "projecting from". As noted above, claim 1 of the parent patent 6,601,830 was worded similarly and was considered to properly, clearly, and patentably recite the invention. Furthermore, this relationship is supported by the detailed disclosure of page 6, lines 7-21 in the Specification so that the meaning of the various terms of claim 37 are made clear.

Claims 12 and 16 are considered to be allowable as depending from an allowable base claim 37 and for other details in claims 12 and 16 as may be appreciated by the Examiner.

Applicant respectfully requests that the anticipation rejections of claims 12, 16, 31, 32, 35, and 37 be withdrawn, and that notice of allowance of these claims be given.

#### **Rejections under 35 U.S.C. §103**

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a

reasonable expectation of success. Third, the cited prior art reference must teach or suggest all of the claim limitations. Furthermore, the suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based upon the Applicant's disclosure. A failure to meet any one of these criteria is a failure to establish a *prima facie* case of obviousness. MPEP §2143.

**Claims**

Claim 34 was rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over Boggs et al. (U.S. Patent No. 4,509,726, hereinafter "Boggs"), in light of Cochrane (British Patent No. GB 2,337,279, hereinafter "Cochrane"). Applicant respectfully traverses this rejection and request reconsideration of the claims. Claim 34 is considered to be allowable as depending from allowable base claim 31 and for additional details of claim 34 as may be appreciated by the Examiner. Therefore, Applicant respectfully requests that the obviousness rejections of claim 34 be withdrawn.

**Indication of Allowable Subject Matter**

The Examiner has objected to claims 3 and 9 as being dependent upon a rejected base claim, but indicated these claims would be allowable if these claims were rewritten in independent form. Applicant wishes to thank the Examiner for this indication of allowable subject matter. On the other hand, the base claims have been amended to provide separate patentability as has been described above.

**Confirmation of Allowed Claims**

Applicant wishes to thank the Examiner for his confirmation of the patentable subject matter of claims 4 and 38-40.

**Regarding Doctrine of Equivalents**

Applicant hereby declares that any amendments herein that are not specifically made for the purpose of patentability are made for other purposes, such as clarification, and that no such changes shall be construed as limiting the scope of the claims or the application of the Doctrine of Equivalents.

**CONCLUSION**

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

The amendments herein are being filed within the shortened statutory period and add no new claims. A terminal disclaimer is attached, and the required fee of \$55.00 is enclosed.

If any fees, including extension of time fees or additional claims fees, are due as a result of this response, please charge Deposit Account No. 19-0513. This authorization is intended to act as a constructive petition for an extension of time, should an extension of time be needed as a result of this response. The examiner is invited to telephone the undersigned if this would in any way advance the prosecution of this case.

Respectfully submitted,

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